

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )

)  
Joint Application by SBC Communications,  
Inc., Southwestern Bell Telephone Company,  
and Southwestern Bell Communications  
Services, Inc. d/b/a Southwestern Bell Long  
Distance for Provision of In-Region,  
InterLATA Services in Kansas and  
Oklahoma )

CC Docket No. 00-217

**REPLY COMMENTS OF THE STATE CORPORATION COMMISSION OF THE  
STATE OF KANSAS TO THE EVALUATION OF THE  
UNITED STATES DEPARTMENT OF JUSTICE**

On December 4, 2000, the United States Department of Justice ("DOJ") issued its evaluation of Southwestern Bell Telephone Company's ("SWBT's") application to offer long distance services in the states of Kansas and Oklahoma. In its evaluation, the DOJ focused on the following three issues related to the Kansas portion of SWBT's application: (1) whether the non-recurring rates reflect proper application of the TELRIC methodology; (2) whether there will be proper resolution of the interim rates in Kansas; and (3) whether SWBT should submit additional evidence of nondiscriminatory access to the Operation Support Systems ("OSS") relied on by competitive local exchange carriers ("CLECs") in Kansas. The State Corporation Commission of the State of Kansas ("KCC") takes this opportunity to respond the DOJ's evaluation.

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## **Non-Recurring Charges for Unbundled Network Elements**

The DOJ, after examining the non-recurring charges in Kansas, concluded that the FCC should independently review the non-recurring charges to determine whether they fall “outside the range that the reasonable application of the TELRIC principles would produce.” DOJ Evaluation, pp. 11-12. The DOJ recommends that the FCC perform this review by first comparing the Kansas prices to those in Texas, and secondly, by considering the extent that CLECs are purchasing UNEs in Kansas.

The KCC questions the suggestion that the FCC should independently review the non-recurring rates set in Kansas. The Federal Telecommunications Act delegates the responsibility for setting UNE prices to the states. 47 U.S.C. §252(d). The KCC has carefully fulfilled its responsibility by setting rates based on the TELRIC principles promulgated by the FCC.

### **Comparison of Prices**

The DOJ focuses on the difference between the Kansas and Texas non-recurring rates. The KCC notes that TELRIC principles have not been distilled into a uniform cost study into which each state can simply plug inputs and receive outputs, but rather is a set of principles to follow. While the DOJ recognizes that differences in prices can result from different judgments on pricing issues, DOJ Evaluation, p. 12, it seems to ignore that fact by suggesting the difference in prices between states results from a failure to correctly apply TELRIC.

While the KCC does not know what methods were used in Texas, in Kansas the cost studies used were TELRIC based. The non-recurring rates were determined after both SWBT and AT&T provided TELRIC-based studies. Although the KCC concluded SWBT and AT&T had misinterpreted the KCC’s order regarding some of the inputs, when the evidence indicated

that the input errors resulted in inaccuracies, the KCC exercised its judgment to weigh the results of the studies and set an appropriate rate.

### **CLEC Purchase of UNEs**

The DOJ states that the low number of UNE lines purchased in Kansas requires the FCC to take a closer look at whether the UNE rates are properly cost-based. DOJ Evaluation, pp. 9-10, 12. The KCC's initial comments stated that 31,000 lines were served by facilities based competition as of June 2000. This information was based on quarterly line count reports filed by CLECs. Their latest reports indicate a substantial shift from resold lines to facilities based service. September 2000 data indicate 55,000 lines are now facilities based. Of this increase, 16,000 are for CLECs that are known purchasers of UNEs. This increase occurred while interim non-recurring charges were still being used. These interim rates were, in some cases, higher than the non-recurring charges ordered on November 3, 2000. The current trend in UNE purchases in Kansas suggests competition is not being constrained by the non-recurring UNE rates.

Furthermore, the KCC's order setting non-recurring prices was issued on November 3, 2000. AT&T, Birch, and SWBT have filed petitions for clarification or reconsideration of that order. The KCC will consider the points raised by these parties and make appropriate changes to non-recurring rates if warranted.

### **Interim Prices**

The FCC has stated that "the mere presence of interim rates will not generally threaten a section 271 application." FCC Texas Order, ¶ 88. However, the DOJ states that, because it has concerns over the propriety of the permanent prices in Kansas, it is troubling to rely on interim rates. DOJ Evaluation, p. 13-14.

In Kansas, interim rates are still in effect for collocation and digital subscriber line (“DSL”) services. The KCC is committed to setting permanent prices for these remaining items. These rates will be set by using the TELRIC pricing principles promulgated by the FCC.

The KCC has an open docket to establish permanent rates for collocation. Docket No. 00-GIMT-733-GIT. The CLECs in the docket requested the KCC postpone its November 28-29, 2000 hearing to allow settlement negotiations on the rates. A hearing, if necessary, will begin on January 30, 2001. The hearing to receive evidence on the designation of DSL UNEs and other required elements in the DSL docket, Docket No. 01-GIMT-032-GIT, is scheduled to begin February 12, 2001. The parties have also asked the Commission to address line-splitting in this docket.

Kansas will set permanent rates for collocation and line-sharing and address line splitting expeditiously, yet allow parties to negotiate to the extent CLECs believe this is desirable. All cost studies used will be based on TELRIC principles. Meanwhile, interim rates, subject to true-up, are in place.

### **Sufficiency of OSS Evidence**

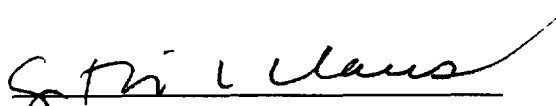
Another concern expressed by the DOJ was whether SWBT has submitted sufficient evidence to demonstrate its OSS systems are available in a non-discriminatory manner. The DOJ points out that because this is the first §271 application in which a regional BOC has relied on testing in one state to demonstrate the adequacy of the same systems in another state, the FCC should require additional proof that the the systems used in Kansas are the same as those in Texas.

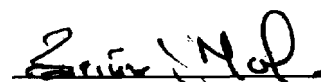
On August 9, 2000, members of Staff toured SWBT's Local Service Center and Local Operations Center in Fort Worth, Texas. *See*, SWBT's Joint Application with the FCC, Charles H. Cleek Affidavit of October 26, 2000, ¶ 43. Staff observed orders from Kansas being processed by representatives using the same procedures and systems used to process Texas orders. Staff has also toured Birch's business offices in Kansas and observed Birch placing Kansas orders through SWBT's center in Texas.

Staff's observations and the evidence presented by SWBT and CLECs during the KCC's review, led the KCC to conclude that SWBT's OSS are region-wide and available to CLECs in a non-discriminatory manner. As stated in the initial comments, the KCC and its Staff will continue to monitor SWBT's performance to ensure Kansas CLECs have appropriate access to SWBTs OSS systems.

Approved by:

  
John Wine, Chair

  
Cynthia L. Claus, Comm.

  
Brian J. Moline, Comm.

DATED: December 11, 2000